In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 507

JOHN J. PYNE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Northern District of Illinois, petitioner and co-defendant Schwartz were convicted under 18 U.S.C. 1952 of traveling from Chicago, Illinois, to Provo, Utah, to promote extortion in violation of the laws of Utah.[1]

1. The evidence showed that in February of 1964, Robert P. Thorn, a businessman from Provo, Utah,

[1] A second co-defendant, Pacewicz, pleaded guilty.

came to Chicago to attend a business convention. After a day's meetings he attended an evening performance of *How to Succeed in Business Without Really Trying*. On the lapel of his suit he was wearing a convention tag which listed, in block letters, Thorn's name, company, and business address.

As he left the theatre at approximately 10:30 p.m., co-defendant Schwartz, who was standing outside the theatre, hailed Thorn by name. Schwartz explained that he was the representative of a manufacturer of heavy equipment and wanted to talk to Thorn about his product. Thorn invited Schwartz to Thorn's room at the Palmer House Hotel to discuss this business.

A moment after their arrival in Thorn's room, Schwartz exposed himself and solicited an act of perversion. When Thorn immediately ordered Schwartz to leave the room Schwartz told him that he (Thorn) would be in serious difficulties if he caused any trouble. Schwartz produced a folder containing a badge and an I.D. card and told Thorn he was an officer of the Chicago Police Department. Upon demand, Thorn then gave Schwartz his driver's license in a plastic folder containing his business cards. Schwartz took notes from these items and asked Thorn for further details on his business and personal life, and warned him that a serious criminal charge would be lodged if anything came of this incident. He also told Thorn that his family and business reputation would suffer if he were so charged.

The next day, Thorn left Chicago and returned to Utah.

Ten days later, defendant Pacewicz, calling himself "Sergeant Walter Duncan" of the Chicago Police Department, appeared at Thorn's office in Provo, Utah. A few minutes later, Pacewicz brought petitioner into the office, identifying him as "Detective John Anderson" of the Chicago Police Department, "a close friend of the father of the young officer" (Schwartz) who had visited Thorn's Chicago hotel room.[2]

Petitioner and Pacewicz told Thorn they had an arrest warrant for his return to Chicago as a result of the episode at his hotel, and they exhibited papers purportedly for Thorn's arrest and extradition to Illinois. They said that Schwartz was in trouble for not having arrested Thorn, and that Schwartz could only be cleared if Thorn returned to Chicago to stand trial. When Thorn protested, Pacewicz responded that they were obliged to produce Thorn in Chicago or to obtain a $25,000 bond from him. They told Thorn they had to return to Chicago as early as possible, and finally agreed to a $10,000 cash bond. Later that morning, Thorn gave Pacewicz an envelope containing $10,000.

Two days later, Pacewicz telephoned Thorn to tell him they would keep everything under control and that the matter would be disposed of in three or four months. He reported that he had succeeded in straightening out "these two boys" so that everyone felt pretty good about the whole thing "back here."

About a month thereafter, petitioner telephoned Thorn to tell him that they (petitioner and Pacewicz) had gone to court that day and the case had been con-

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[2] It was later established that these identities were fictitious, and that no complaint was ever issued for Thorn's arrest.

tinued until July 9, and that everything would be straightened out by then.

Both of these telephone calls were transcribed, and the tapes revealed that both were long-distance calls placed from a booth.

Petitioner was subsequently arrested by the FBI at his residence in Chicago, and a search incident to the arrest uncovered two blank Chicago Police Department identification cards, one for a sergeant and one for a detective.

At trial, in addition to the foregoing, the government established that Pacewicz rented a car at the Salt Lake City airport on the evening before the confrontation at Thorn's office and returned it within a few hours after the $10,000 "bond" was handed over. The rental clerk identified petitioner as standing near the counter at the time the car rental agreement was signed.

2. Petitioner contends (Pet. 9-11) that apart from uncorroborated "admissions," there was no evidence to support a finding that any of the defendants had travelled in interstate commerce from Chicago, where the prosecution was venued, to Utah. We note first that his "uncorroborated admissions" objection is inapposite since the statements made to Thorn in the course of the extortion enterprise were not after-the-fact "admissions" to a law enforcement officer, which require corroboration.[3] They were, rather, part of the

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[3] *Warszower* v. *United States*, 312 U.S. 342, 347-348; compare *Opper* v. *United States*, 348 U.S. 84; *Smith* v. *United States*, 348 U.S. 147; *Wong Sun* v. *United States*, 371 U.S. 471, 488-489.

criminal transaction itself and were capable, independently, if credited, of providing sufficient proof that they had come from Chicago, where the underlying incident took place, and that they were in a hurry to "return" to that city. Accordingly, the court of appeals properly held that, on the basis of the statements made by petitioner and Pacewicz, the "jury could conclude that . . . [petitioner] had come from Chicago" (Pet. App. A. 8). There was, of course, further evidence on the interstate character of the crime: the rental and return of an automobile at the Salt Lake City airport, and the making of two long-distance telephone calls to the victim in Utah. Insofar as petitioner suggests that there was, at least, no basis for prosecution in Chicago because there was no evidence that he and Pacewicz had actually departed from that city to confront Thorn, he ignores the fact that the extortion plot unquestionably began with the carefully staged incident in Thorn's hotel room in Chicago, and under 18 U.S.C. 3237(a) any offense begun in one district and completed elsewhere may be inquired into and prosecuted, *inter alia*, where begun.[4]

3. Petitioner also makes the clearly untenable argument (Pet. 14-15) that Congress did not contemplate or intend that prosecution under 18 U.S.C. 1952

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[4] There is, therefore, in our view, no need to reach the alternative holding of the court below that the government's showing was at least sufficient to cause the burden of proof to shift to petitioner to disprove a fact peculiarly within his knowledge. Compare *Morrison* v. *California*, 291 U.S. 82; *United States* v. *Fleischman*, 339 U.S. 349.

"fluctuate" in accordance with the laws of the fifty states. It suffices to say that Congress itself has defined the reach of the statute as punishing interstate travel to promote a "violation of the laws of the State in which committed * * *." 18 U.S.C. 1952(b). The court below also correctly rejected the assertion that, so understood, Section 1952 is unconstitutional as attempting an impermissible delegation of power to the States or an unauthorized extension of federal jurisdiction into purely local affairs (Pet. App. A. 6-7). See, *e.g.*, *United States* v. *Zizzo*, 338 F.2d 577, 579-580 (C.A. 7), certiorari denied, 381 U.S. 915; *Turf Center, Inc.* v. *United States*, 325 F.2d 793, 795-796 (C.A. 9); *Spinelli* v. *United States*, 382 F.2d 871, 880 (C.A. 8), certiorari granted, 390 U.S. 942.[5] See, also, *United States* v. *Sharpnack*, 355 U.S. 286 (sustaining the Assimilative Crimes Act).

4. Petitioner's remaining contention, that the trial court erroneously instructed the jury that they were obliged to find that the Utah extortion statute was violated (Pet. 15-18), depends on giving a strained reading to words taken out of context. As the court below held (Pet. App. A. 10), the context demonstrates that the trial judge was merely giving a fair and accurate charge, at petitioner's request, on the theory of the defense.

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[5] Although the petition in *Spinelli* sought to raise the same attack on the constitutionality of 18 U.S.C. 1952 that petitioner here suggests (see petition in No. 801, O.T. 1967, pp. 32-33), this Court modified its order granting certiorari to limit review to the validity of the search and seizure involved in that case. 391 U.S. 933.

5. Finally, we point out that there would be no reason to hold this case pending a decision in *United States* v. *Nardello*, No. 51, this Term, probable jurisdiction noted, 392 U.S. 923. The issue in *Nardello* is whether 18 U.S.C. 1952 applies to extortionate conduct proscribed under a State statute labeled "Blackmail." As the court below noted (Pet. App. A. 1, n. 1), there has been no contention that the *Nardello* issue is presented here, since the Utah statute violated by petitioner is captioned "Extortion." See Title 76, Section 19-1 of the Utah Code.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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